

Congress of the United States
House of Representatives
Washington, DC 20515

September 23, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary McAleenan:

I write to urge you to use the discretionary authority¹ provided the Secretary in Public Law 115-218 to delay the law's requirement that an employer obtain an approved temporary labor certification from the U.S. Department of Labor before submitting an FY 2020 Commonwealth-Only Transitional Worker application to the U.S. Citizenship and Immigration Services. I made this request to the USCIS Legislative Affairs Officer at a meeting I called with U.S. Department of Labor officials on August 29. Thus, please consider this my second request.

Information posted online by the Department of Labor indicates that as of September 19 only half the applications for temporary labor certification received have been issued final decisions.² This leaves a significant number of current Commonwealth-Only Transitional Workers (CW-1) in jeopardy of losing their status. In fact, USCIS has informed me that as many as 11,332 workers currently holding CW-1 permits will lose their status over the next six weeks. They represent one-third of the Marianas total workforce.

This situation appears to be largely the result of decisions by the Commonwealth of the Northern Mariana Islands and by individual employers. Public Law 115-218, enacted July 24, 2018, gave the Governor of the Commonwealth responsibility for conducting an occupational wage survey annually that could be one basis for issuance of temporary labor certifications. Even though the Department of Labor opened the application window for certifications on April 4, 2019, as the law required, the Governor did not submit a survey to the Secretary of Labor until the next month. This partial survey, covering 84 occupations, was approved on May 9. The Governor subsequently submitted a second survey, covering another 291 occupations, which the Secretary of Labor approved on June 28.

Although employers could have begun submitting applications for temporary labor certifications as early as April 4, few chose to do so. According to press reports, community business leaders advised waiting to apply until the occupational wage survey was completed.³

¹ "The Secretary of Homeland Security, in the Secretary's discretion, may delay the effective date of any provision of this Act relating to Commonwealth Only Transition Workers until the effective date of the interim final rule described in subsection (b), except for provisions providing annual numerical caps for such workers." Public Law. 115-218, Section 3(e)(2)

² Of 5, 356 cases submitted, 2,540 had been issued final determination.

<https://icert.doleta.gov/index.cfm?event=ehGeneral.dspProcessingTimes>

³ "Prevailing wage survey a coordinated effort, official says," *Marianas Variety*, April 18, 2019. Retrieved at <http://www.mvariety.com/cnmi/cnmi-news/local/112109-prevailing-wage-survey-a-coordinated-effort-official-says>

Else, the prevailing wage in Guam would have to be used as the offer wage for any job for which certification was sought. In many cases this would have had the effect of raising wages for both U.S. and CW-1 workers and increasing business costs. Nevertheless, there were employers who chose to submit applications promptly; and they are largely not in jeopardy at this time. Of the applications submitted by employers in April, May, and June, 89 percent have been issued. Of the applications submitted by employers who chose to wait to July, August, and September, however, only 17 percent have been issued.⁴

Notwithstanding the cause of the current situation, I believe that you have a responsibility to exercise your discretionary authority to delay the requirement for a temporary labor certification out of consideration of the larger purpose of the law that established the Commonwealth-Only Transitional Worker program. Public Law 110-229 expressed the intent “to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of phasing-out the Commonwealth’s nonresident contract worker program....” The impending loss of status of 11,332 workers, which your Department has recognized, would certainly constitute such adverse effect. The Government Accountability Office in advising Congress on the CW-1 program estimated the loss of so many workers would cause the Mariana’s Gross Domestic Product to fall from 26 to 62 percent.⁵

Were you to delay the requirement for the temporary labor certification employers might still be able to submit, and USCIS to receive, extension of stay petitions for current CW-1 workers. Such a filing would allow covered CW-1 workers to continue lawfully residing in the Marianas and working for up to 240 days beyond expiration of their current status or until an FY 2020 application for them has been adjudicated.

Clearly, time is of the essence in this request. So, I thank you for your prompt consideration.

At the same time, I want to confirm my continued commitment to increasing the U.S. workforce in the Marianas and phasing out the CW-1 program, the policy goals that drive both Public Law 110-229 and Public Law 115-218.

Please let me know, if you have any questions. Your staff may also contact my Chief of Staff, Bob Schwalbach, or my Senior Legislative Assistant, Frances Diaz, at 202-225-2646 or via email at bob.schwalbach@mail.house.gov or frances.diaz@mail.house.gov.

Sincerely,



GREGORIO KILILI CAMACHO SABLÁN
Member of Congress

⁴ See, <https://icert.doleta.gov/index.cfm?event=ehGeneral.dspProcessingTimes>

⁵ Commonwealth of the Northern Mariana Islands - Implementation of Federal Minimum Wage and Immigration Laws, p. 23. GAO-17-437. May 2017.